

NOT FOR PUBLICATION - For Upload

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

United States of America,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 1984-104
	)	
Government of the Virgin Islands,	)	
	)	
Defendant.	)	
	)	

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**APPEARANCES :**

**Donald G. Frankel, Esq.**  
U.S. Department of Justice  
Washington, D.C.  
*For the plaintiff,*

**Michael Law, Esq.**  
Assistant Attorney General  
St. Croix, U.S.V.I.  
*For the defendant.*

**ORDER**

On September 27, 2001, the Court issued an order requiring the Government of the Virgin Islands ["Virgin Islands"] to show cause why it should not be held in contempt for its failure to comply with the Amended Consent Decree in this action ["Amended Decree"] and various Court orders related to the Amended Decree. Before the hearing, each of the parties submitted reports concerning the status of the Virgin Islands's compliance with the orders issued by the Court on February 12, 2000, September 6, 2000, and December 13, 2000, as well as with the Amended Decree as a whole. A hearing was held on October 18, 2001, during which

the Virgin Islands agreed that it had not complied with the Amended Decree and Court orders, attempted to explain why it had failed to comply, and stated its intention to comply henceforth. At the Court's request, the United States submitted a proposed order, and the Virgin Islands responded with its counter-proposals. The Court having considered the entire record in this matter, this Order sets forth the injunctive relief necessary to bring the Virgin Islands into compliance with the Amended Decree, earlier Court orders, and the Clean Water Act, as follows:<sup>1</sup>

**A. Specific Projects/Repairs to Wastewater System**

1. Projects/Repairs: Attached as Exhibit A is a list of projects and repairs that the Virgin Islands Department of Public Works ["DPW"] is hereby ordered to complete by the deadlines set forth therein. If DPW concludes, after making a good faith effort, that it will be unable to meet any of these deadlines, it shall file a motion seeking an extension of time well before the scheduled deadline. After completing the projects/repairs, DPW shall properly operate and maintain the wastewater system in order avoid the need to make future repairs to the items being addressed under Exhibit A.

2. DPW Identification of Funds for Projects/Repairs and

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<sup>1</sup> This Order does not resolve the issue of whether the Virgin Islands should be held in contempt for its earlier violations of the Amended Decree and this Court's orders and the appropriate contempt sanctions.

Identification Persons Responsible for Projects/Repairs: Within forty-five days of the date of this Order, DPW shall file with the Court a report providing the following information for each of the projects/repairs listed at Exhibit A: (a) DPW's estimate of the cost for each project/repair as well as a total estimate for all of the projects/repairs (the "Total Cost Estimate"),<sup>2</sup> (b) the specific source of funds that DPW intends to use to pay for each project/repair, (c) the name of the DPW employee who will be primarily, and personally, responsible for ensuring that the project/repair is completed in a timely manner, and (d) the names of the other DPW employee(s) and DPW contractor(s),<sup>3</sup> as applicable, who will be involved in the actual implementation of the project/repair. If a project has already been completed, DPW shall indicate the date of completion and whether payment (or partial payment) has been made and any amounts not yet paid. If a project is partly completed, DPW shall indicate the nature of the work already completed as well as whether payment (or partial payment) has been made and any amounts not yet paid.

3. Funding of Exhibit A Projects/Repairs: Within sixty

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<sup>2</sup> For contract management of the St. Croix, Airport Lagoon, Mangrove Lagoon, and Cruz Bay plants, DPW shall provide an estimate for one year of contract management.

<sup>3</sup> If the contractor for a particular project/repair has not been identified as of the date of the filing of the report, the Virgin Islands shall inform the Court of the identity of the contractor no later than 30 days before the deadline for the particular project/repair.

days of the date of this Order, the Virgin Islands shall deposit into a separate interest bearing bank account at a bank authorized to do business in the Territory of the Virgin Islands ["the Account"] an amount calculated as follows. The amount shall equal the Total Cost Estimate identified in the report required by Part A.2 of this Order minus (a) the amounts identified for the projects/repairs that will be funded with monies currently deposited in the Virgin Islands Wastewater Corrective Action Trust Fund,<sup>4</sup> which was established pursuant to the Amended Decree, and (b) any amounts that the Virgin Islands has already paid for the projects/repairs.<sup>5</sup> Monies in the

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<sup>4</sup> Pursuant to Section VI and Exhibit I of the Amended Decree, the disinfection upgrade at the Airport Lagoon facility, as well as the wet well upgrades at the Cancryn, Long Bay, and Airport pump stations, are to be funded with monies in the Virgin Islands Wastewater Corrective Action Trust Fund established pursuant to the Amended Decree.

<sup>5</sup> In its October 12, 2001 submission to the Court, the Virgin Islands provided a table entitled "Department of Public Works Requirements to Achieve Compliance to Satisfy Consent Decrees and Court Ordered Stipulations and Capital Projects." This table was marked as Plaintiff's Exhibit M at the October 18, 2001 hearing. On this table, the Virgin Islands identified several repairs/projects for which funding was available from specific sources, including a DOI grant (\$770,000), an EPA grant (listed as \$200,000, but only \$100,000 is actually available), the Indirect Cost Fund (\$340,000), the Interest Revenue Fund (\$100,000), and the STJ Capital Fund (\$200,000). Any amounts that the Virgin Islands intends to fund from these sources shall be placed in the Account, along with the other monies to be used for the Exhibit A projects/repairs, within 30 days of the date of this Order. To the extent that these funds are currently available, they can be transferred to the Account. To the extent that the funds are expected to be future reimbursements, the Virgin Islands shall place the amount needed in the Account within 30 days of the date of this Order (from the General Fund or other sources) and later obtain reimbursement for the monies. In any event, the Virgin Islands is responsible for funding the Account to cover the monies for these projects even if some of the particular funding it has identified on Exhibit M turns out to be unavailable.

Account, as well as interest earned on such monies, shall be used only to implement the projects/repairs listed at Exhibit A. The Commissioner of DPW (or, if the Virgin Islands Waste Management Authority ["VIWMA"] has been established, the chief executive of the VIWMA) and the Commissioner of Finance shall together have the joint authority to access monies in the Account and to sign checks written on the Account, and shall not need to obtain the approval of any other agency or official of the Virgin Islands government, *provided*, however, that establishing the Commissioner of Finance as joint signatory on the Account will not result in payment delays of any kind whatsoever. The Commissioner of DPW (or VIWMA chief executive) shall be responsible for ensuring that monies in the Account are used only for Exhibit A projects/repairs. If additional monies are needed to implement the projects/repairs listed at Exhibit A in addition to the initial deposit, the Virgin Islands shall ensure that additional funds are made available to complete the projects/repairs. If all of the projects/repairs are completed and there are monies remaining in the Account, the Virgin Islands shall use such funds only for other wastewater purposes. The Commissioner of DPW (or VIWMA chief executive) shall be responsible for ensuring that such excess funds are used in this manner. The Virgin Islands shall notify the Court and the parties of the establishment and

funding of the Account within three days of the establishment and funding of the Account.

4. Reports: For the first six months after the entry of this Order, DPW shall file with the Court bi-weekly reports of the progress on each of the projects/repairs listed at Exhibit A. After the first six months, DPW shall file monthly reports until all such projects/repairs have been completed, but only so long as there are no problems in keeping to the schedule set forth in Exhibit A. DPW shall provide copies of the bi-weekly/monthly reports to the United States, the Virgin Islands Department of Planning and Natural Resources, and the Court Monitor. The copies provided to the United States shall be faxed to Donald Frankel at 617-450-0448, to Pedro Modesto at 787-289-7104, and to Nina Dale at 212-637-3202. DPW shall also include, in the Quarterly Progress Reports required by Section IX.1 of the Amended Decree, until all of the Exhibit A projects/repairs have been completed, information indicating any deposits made into the Account established pursuant to Paragraph A.3 of this Order during the prior quarter as well as all expenditures made from the Account during the prior quarter. For each expenditure, DPW shall identify the particular project/repair involved as well the specific nature of the expenditure. DPW shall also indicate the balance in the Account at the end of the quarter. DPW shall

describe all expenditures made from the Virgin Islands Wastewater Corrective Action Trust Fund as well as the balance of that fund at the end of the quarter.

**B. Contract Operation, Management, Repair and Maintenance of Entire Wastewater System**

1. At any time after May 1, 2002, the United States may submit to the Court a proposed order requiring the Virgin Islands to contract with a qualified independent private contractor for the operation, management, repair and maintenance of the entire wastewater system territory-wide. The United States shall include in the proposed order general requirements for the contract, including the powers of the contractor, the deadline for entering into such a contract, and the funding mechanisms to ensure payment of the contractor. The Virgin Islands shall have fifteen days to respond to any such proposed order. If the United States submits such a proposed order seeking contract operation of the entire wastewater system, the Court will determine, based on the submissions of the parties and any proceedings that the Court may choose to conduct, whether to require such contract operation of the entire wastewater system, and if it concludes that such contract operation is appropriate, the Court will issue an order requiring the Virgin Islands to enter into such a contract by a date certain.

**C. Report on Certain Long-Term Issues**

1. By June 1, 2002, the Virgin Islands shall submit to the Court a report addressing the following issues:

a. the amount of money needed to properly operate and maintain the wastewater system (including the treatment plants, the pump stations, and the collection and conveyancing system) on an annual basis, the amount of money needed for any needed repairs in addition to those listed in Exhibit A, and the expected source of these monies. If the VIWMA has been established, the report shall discuss this issue in terms of the funds that can be raised by the VIWMA as well as any additional funds that will be contributed to the VIWMA by the Virgin Islands government. If the Virgin Islands has not established the VIWMA, the report shall discuss this issue in terms of providing sufficient funding to pay for the contract described in Part B of this Order.

b. how the Virgin Islands intends to address the chronic problems with the sewer collection system including, without limitation, whether the Virgin Islands intends to conduct further evaluation of the status of the collection system and the needed repairs/replacements, what the Virgin Islands currently believes needs to be repaired/replaced, what additional maintenance the Virgin Islands believes is needed for the



collection system, the expected cost of the items listed above (further evaluation, repairs/replacement, maintenance), and how the Virgin Islands intends to fund these costs.

c. the expected cost of upgrading or replacing the St. Croix WWTP and the Airport Lagoon WWTP so that they will comply with secondary treatment requirements and how the Virgin Islands intends to fund these costs over the next three years so that construction of the facilities is not delayed.

**D. General Provisions**

1. Status Conferences: The Court will hold periodic status conferences to assess the progress of the Virgin Islands with respect to the requirements of this Order. The first such status conference shall be held on March 25, 2002 at 9:30 a.m. in the St. Thomas Division of the District Court.

2. Meetings of the Parties: For the first six months after the entry of this Order, the parties shall, under the direction and coordination of the Court Monitor, have monthly telephone conference calls to discuss the status of the Virgin Islands's compliance with this Order, the Amended Decree, as well as any future orders issued by the Court. Thereafter, at the Court Monitor's discretion, the parties shall have bi-monthly telephone conferences. The Monitor may also convene up to two in-person meetings per year. The Monitor shall attempt to

schedule half of such meetings in the Virgin Islands and half in New York. As an alternative to in-person meetings, video conferencing shall be considered.

3. Court Monitor: The Court Monitor shall begin to submit the status reports required by Section X.6 of the Amended Decree, which shall be due sixty days after the end of each calendar quarter. In these reports, the Monitor shall discuss the Virgin Islands's compliance with this Order, the Amended Decree, as well as with any future orders issued by the Court.

4. Sanctions: If the Virgin Islands fails to comply with any of the requirements of this Order, the Court may impose contempt sanctions. Such sanctions may include fines against the Virgin Islands government, fines and/or incarceration for any individual who fails to make best efforts to comply with this Order, and/or any other sanctions that the Court determines are appropriate including, but not limited to, additional escrow funds and/or a ban on commercial and/or residential connections to the sewer system or of additional connections with respect to particular wastewater treatment plants.

5. Prior Orders: The Court's earlier orders related to this matter including, without limitation, the Orders of February 12, 2000, September 6, 2000, and December 13, 2000, as well as the Amended Decree (as modified by several stipulations), remain

in full force and effect.

**ENTERED** this 19th day of December, 2001.

**FOR THE COURT:**

                    /s/                    

**Thomas K. Moore**  
**District Judge**

**ATTEST:**

**WILFREDO F. MORALES**  
**Clerk of the Court**

**By:** \_\_\_\_\_  
\_\_\_\_\_**Deputy Clerk**

**Copies to:**

Honorable Geoffrey W. Barnard  
Joycelyn Hewlett, Esq.  
    Asst. U.S. Attorney  
    St. Thomas, U.S.V.I.  
Donald G. Frankel  
    U.S. Dept. of Justice  
    **VIA FACSIMILE**  
    **(617) 450-0448**  
Iver A. Stridiron  
    Attorney General  
    **VIA FACSIMILE**  
    **774-9710**

Michael Law, Esq.  
    Asst. Attorney General  
    St. Thomas, U.S.V.I.  
    **VIA FACSIMILE**  
    **774-9710**  
Dr. Rafael Rios  
    Court Monitor  
    **VIA FACSIMILE**  
    **787-763-9597**  
Mrs. Jackson  
Mrs. Trotman  
Mrs. Jeffries  
Jennifer N. Coffin, Esq.

**EXHIBIT A**

**LIST OF PROJECTS/REPAIRS**

<b>Wastewater Treatment Plant/Pump Station/Collection System</b>	<b>Projects/Repairs</b>	<b>Deadline for Completion</b>
	<b><u>St. Croix</u></b>	
St. Croix WWTP	contract operation until the Virgin Islands has achieved six consecutive months of compliance with all applicable effluent limitations ( <u>see</u> Amended Decree Section V.3)	November 30, 2001 (start date)
	repair septage receiving station or replace by positive displacement pump	February 28, 2002
	replace/repair the mechanical bar screens mechanism	August 28, 2002
	repair grit collector mechanism; install new sluice gates, new railings, cross members, frame, and grit scrapers	May 31, 2002
	repair or replace the sludge removal mechanism (scraper system) in the clarifiers, refurbish the sludge drain pipes and sludge waste pumps	July 31, 2002
	repair overhead crane limit switch	February 28, 2002
	replace one variable speed starter and two single speed starters for influent pumps	April 30, 2002
	repair mechanical seals for influent pumps	April 30, 2002
	repair collapsed land portion of outfall	May 31, 2002
	repair digester pumps	April 30, 2002

St. Croix Sewer Collection System	repair Race Track open hole with sewage flowing through it located adjacent to the East Airport Road and the Randal "Doc" James Horse Race Track.	June 30, 2002
	repair Bethlehem Gut sewer line discharging into the Bethlehem Gut, west of the Territorial Court, at the bridge which traverses the Bethlehem Gut.	May 31, 2002
	investigate and repair Catherine's Rest collapsed line segment.	May 31, 2002
	investigate and repair Adventure Gut accumulation of raw sewage near the Patrick Sweeney Police Headquarters.	August 31, 2002
	conduct sanitary sewer system evaluation survey, infiltration/ inflow studies with recommendations to replace or repair collapsed sewer line segments around St. Croix and stop inflow	March 29, 2003
	replace or repair any collapsed sewer line segments in St. Croix not identified above and stop inflow in accordance with sanitary sewer system evaluation survey recommendations	November 30, 2003
Figtree Pump Station	overhaul house Pump No. 3, refurbish and replace the bearings	April 30, 2002
	evaluate and repair overhead crane	March 31, 2002
	repair house pump no. 1, or replace with new pump for no. 1 position	April 30, 2002
	refurbish motor control center for all pumps, refurbish starters and comptrollers	May 31, 2002
	replace or repair air exhaust/inlet ventilation system in wet well	August 30, 2002

	replace check valves, flanges and spool pieces	July 31, 2002
	repair/reinforce all house pumps anchor bases	June 30, 2002
	refurbish emergency generator (alternate power unit)	August 30, 2002
Lagoon Street Pump Station	new emergency generator (alternate power unit)	August 30, 2002
LBJ Pump Station	new emergency generator (alternate power unit)	August 30, 2002
	replace or repair any pumps that are not operational, so that all the house pumps are in full operational condition at all times	May 28, 2002
	<b><u>St. Thomas</u></b>	
Airport Lagoon WWTP	repair or replace chlorine generator or put in place an alternative disinfection program	June 30, 2002
	repair or replace all mechanical blowers, repair air manifolds for the aeration system, install miscellaneous air piping, valves, fittings and diffusers	July 31, 2002
	repair or replace baffle curtain	August 31, 2002
	headwork improvements; install screening device to trap objects (bar screen), install distribution header and diffuser to allow influent to enter lagoon below water surface and eliminate existing influent fall into the lagoon, install flow meter	August 30, 2002

	remove sludge from lagoon	begin February 28, 2002 and complete by September 30, 2002
	internal sludge recycling mechanism	December 30, 2002
	enhance sampling points (influent and effluent locations), provide platform (rest) for sampling equipment	May 30, 2002
	reinforce lagoon west berm	December 30, 2002
	repair access road	December 30, 2002
	refurbish administration building	August 31, 2002
	refurbish/repair emergency generator	April 30, 2002
	contract operation until the Virgin Islands has achieved six consecutive months of compliance with all applicable effluent limitations ( <u>see</u> Amended Decree Section V.3)	December 31, 2001 (start date)
Cancryn Pump Station	repair/ replace inlet/exhaust air ventilation system, install explosion-proof lights in dry well, repair or replace bar screen, provide overhead crane or lift for operator to remove screened debris	August 30, 2002
Long Bay Pump Station	repair/ replace inlet/exhaust air ventilation system, repair/ replace explosion-proof lights in dry well, repair or replace bar screen, provide overhead crane or lift for operator to remove screened debris	October 30, 2002

Airport Pump Station	repair/ replace inlet/exhaust air ventilation system, repair /replace explosion-proof lights in dry well, repair or replace bar screen, provide overhead crane or lift for operator to remove screened debris	October 31, 2002
Vessup Bay (Nazareth) WWTP	replace tank walls that are corroded	July 31, 2002
Brassview WWTP	Repair/replace outfall or implement acceptable effluent disposal method (i.e.; resource recovery for agricultural purposes)	December 30, 2002
Mangrove Lagoon WWTP	contract operation to continue until for two years from commencement of operation of plant ( <u>see</u> Amended Decree Section V.1)	January 31, 2002 or from startup of Mangrove (whatever occurs first)
	<b><u>St. John</u></b>	
George Simmonds Pump Station	Replace concrete lid and access hatch, install new pump bases and rails, install new control panel, and replace or repair fencing.	May 31, 2002
Cruz Bay Ejector Pump Station	Replace or repair pump that is not operational, replace pump controls and electrical boxes.	May 31, 2002
Cruz Bay Pond Mouth Pump Station	Repair or replace two non-operational pumps, repair or replace emergency generator.	May 31, 2002
	Construct new Power Boyd Pump Station	December 31, 2002



Cruz Bay WWTP	contract operation to continue until for two years from commencement of operation of plant ( <u>see</u> Amended Decree Section V.1)	Started September 28, 2001
George Simmonds WWTP	Improvements for the George Simmonds WWTP to enhance treatment capabilities	May 31, 2002
	<b><u>Miscellaneous</u></b>	
	Reimburse the \$1.9 million of funds that the Virgin Islands has indicated were incorrectly taken out of an account for the Mangrove Lagoon project	March 31, 2002